IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

LA.App..No. 211 of 2002(C)

LAR 105/1999 OF SUB COURT, KASARAGOD.

APPELLANT: CLAIMANT IN L.A.R

K.N.MOHAMOOD, S/O. MOHAMMED, MULIYAR
VILLAGE, NELLIKAD, KASARAGOD TALUK.

BY ADV. SRI.S.V.BALAKRISHNA IYER

RESPONDENT: REFERRING OFFICER IN L.A.R.

THE SPECIAL TAHSILDAR (LA),KASARAGOD.

BY GOVERNMENT PLEADER SMT. K.R.DEEPA

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 26/09/2007 ALONG WITH LAA 84/2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.211/2002 & 84/2003

Dated: September 25, 2007

JUDGMENT

Harun-Ul-Rashid, J.

These land acquisition appeals are filed by the claimant against the common judgment dated 27.9.2001 in LAR Nos.105/1999 and 104/1999 respectively on the file of the Sub Court, Kasaragod. The extent of land under acquisition is 0.3190 hectares of dry land in R.S.No.112/5 and 0.1585 hectare of dry land in R.S.No.111/3 of Muliyar village Kasaragod taluk. The acquisition was made for the construction of an engineering college. The last date of publication of sec.4(1) notification is 12.2.1997.

2. The claimant in both the LARs. is one and the same person. The land acquisition officer had fixed the land value at Rs.2500/- per cent as against the claim of Rs.30,000/- per cent. A commissioner was deputed to assess the value of improvements and to assess the value of structures in the property and he submitted Ext.X1 report. The commissioner also valued the structures and other improvements in the property and also reported the market value of the land in the locality at Rs.3000/- per cent. The claimant filed objection to Ext.X1 report. In the objection he has stated that the estimated value reported by the commissioner with regard to the structures and improvements are too low. The claimant relied on Ext.A1 document and urged that the acquired land is comparable and similar to Ext.A1 land and argued that the market value

given for Ext.A1 land can be fixed as the market value of the acquired lands. The court below for valid reasons held that Ext.A1 land is not comparable and similar to that of the acquired land. The court below held that the claimant is entitled to the value at the rate of Rs.3000/- per cent as assessed by the commissioner and also held that the value of improvements assessed by the commissioner is not based on any reliable data or on any sound footing and therefore the claimant is not entitled to any enhancement for the value of improvements on the basis of Ext.X1 Commission Report. Being aggrieved by the nominal increase of Rs.500/- per cent, the claimant preferred the above two land acquisition appeals.

3. We have examined the materials on record. The court below found that the basic land Ext.R1 was sold as per document No.5/95 on 20.1.1995 at the rate of Rs.2500/- per cent and held that going by the description of Ext.R1 land, it can be found that there is no public road on the side of this property or proximity to it. The value shown in Ext.R1 was not relied on by the court below for fixing the value of the acquired land. The court below also did not grant any additional compensation towards the value of structures on the basis of Ext.X1 Commission Report. The learned counsel for the appellant vehemently argued that the acquired lands are far superior to Ext.R1 land and that the acquired land could be compared to Ext.A1 land and requested this court to fix the market value at the rate of Ext.A1 land. As found by the trial court Ext.A1 land is having high potential than the acquired lands and the said land is bounded by

Jalsoor road which is an important public road on the south and also on the west by Juma Masjid road. At the same time, the additional grant of Rs.500/- per cent for the acquired land is too low. The property under acquisition is situated in an area having commercial importance. The acquired land is lying just 50 metres away from the LBS Centre for Science and Technology which is an Engineering College in the locality.

4. Considering the importance and the location of the acquired lands, we are of the view that the acquired lands should have alteast fetched Rs.5000/- per cent. In the appeals, since the appellant has limited the claim for enhanced compensation at the rate of Rs.1500/- per cent, the market value of the land per cent is fixed at Rs.4500/-. Thus the appellant is entitled to additional market value at the rate of Rs.1500/- per cent. The appellant in both the appeals is also entitled to all the statutory benefits under the Act.

The appeals are allowed and the judgments and decrees under appeal are modified. No order as to costs. The court fee payable in L.A.A.84 of 2003 shall be realised by the District Collector.

KURIAN JOSEPH, JUDGE

HARUN-UL-RASHID, JUDGE

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A. No.211/02 &
84/2003

JUDGMENT

25.9.2007